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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,705	06/03/2005	Tim Neil	93422-47	5122
90525	7590	03/02/2011		
Smart & Biggar 438 University Avenue Box 111, Suite 1500 Toronto, ON M5G 2K8 CANADA			EXAMINER NGUYEN, DUSTIN	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 03/02/2011	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/537,705

**Applicant(s)**

NEIL ET AL.

**Examiner**

DUSTIN NGUYEN

**Art Unit**

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 9-13, 21-28, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 9-13, 21-28, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1, 9-13, 21-28, 30 and 31 are presented for examination.

### **Claim Objections**

2. Claims 25 and 27 are objected to because of the following informalities: claims 25 and 27 depend on claims 3 and 15, which had been cancelled. Appropriate correction is required.

### **Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 30 is directed towards a computer program product comprising a computer readable medium. A claim directed to a "computer readable medium", absent of an explicit and deliberate definition in the specification or limiting claim language.

The broadest reason interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim is non-statutory under 35 U.S.C. § 101. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory

embodiments are not directed to statutory subject matter). Therefore, claim 30 is directed towards non-statutory subject matter (See MPEP section 2106, Seventh Edition, Revision No. dated February 2000, at page 2100-10 and 2100-11).

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 9, 10, 13, 21, 22, 25-28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel [ US Patent No 6,167,441 ], in view of Barrett et al. [ US Patent Application No 2004/0015583 ].

7. As per claim 1, Himmel discloses the invention as claimed including a method of determining operational status of a wireless communication device capable of executing server-side applications [ i.e. determine the type of client device which is requesting services from a web server ] [ col 2, lines 20-22 ], said wireless communication device being a mobile device [ Figure 3; col 3, lines 8-14; and col 6, lines 28-33 ], the method comprising:

at a server in communication with said wireless communication device [ Figure 4; and col 5, lines 32-46 and 63-66 ]:

sending a message to said wireless communication device capable of executing server-side applications requesting operational status of the device [ i.e. snoop or request for device information ] [ 209, Figure 5, Figure 6; col 7, lines 18-38; and col 8, lines 19-41 ]; and

receiving a response message from said wireless communication device indicative of the operational status of the device [ i.e. user input sent back ] [ col 7, lines 6-10 and lines 28-38; and col 8, lines 19-col 9, lines 6 ].

Himmel does not specifically disclose

wherein said operational status of the wireless communication device comprises:

an indication of N messages most frequently received at said device, where N is an integer.

Barrett discloses

wherein said operational status of the wireless communication device comprises:

an indication of N messages most frequently received at said device, where N is an integer [ i.e. the number of times each message has been received ] [ Figures 7 and 11; and paragraphs 0068, 0071, 0082 ].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Himmel and Barrett because the teaching of Barrett would enable to provide a system and method for monitoring network devices and data that are broadcast between network devices [ Barrett, paragraph 0001 ].

8. As per claim 9, it is rejected for similar reasons as stated above in claim 1.
9. As per claim 10, Himmel discloses wherein said response message is an eXtensible Markup Language (XML) message [ col 1, lines 56-64 ].
10. As per claim 13, it is rejected for similar reasons as stated above in claim 1.
11. As per claim 21, it is rejected for similar reasons as stated above in claim 1.
12. As per claim 22, it is rejected for similar reasons as stated above in claim 10.
13. As per claims 25-28, Barrett discloses wherein said indication of N messages is an indication of a plurality of messages [ i.e. the number of times each message has been received ] [ Figures 7 and 11; and paragraphs 0068, 0071, 0082 ].
14. As per claim 30, it is rejected for similar reasons as stated above in claim 1.
15. As per claim 31, it is rejected for similar reasons as stated above in claim 25.
16. Claims 1, 9, 13, 21 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel [ US Patent No 6,167,441 ], in view of Spratt et al. [ US Patent No 6,999,717 ].

17. As per claim 1, Himmel discloses the invention as claimed including a method of determining operational status of a wireless communication device capable of executing server-side applications [ i.e. determine the type of client device which is requesting services from a web server ] [ col 2, lines 20-22 ], said wireless communication device being a mobile device [ Figure 3; col 3, lines 8-14; and col 6, lines 28-33 ], the method comprising:

at a server in communication with said wireless communication device [ Figure 4; and col 5, lines 32-46 and 63-66 ]:

sending a message to said wireless communication device capable of executing server-side applications requesting operational status of the device [ i.e. snoop or request for device information ] [ 209, Figure 5, Figure 6; col 7, lines 18-38; and col 8, lines 19-41 ]; and

receiving a response message from said wireless communication device indicative of the operational status of the device [ i.e. user input sent back ] [ col 7, lines 6-10 and lines 28-38; and col 8, lines 19-col 9, lines 6 ].

Himmel does not specifically disclose

wherein said operational status of the wireless communication device comprises:

an indication of N messages most frequently received at said device, where N is an integer.

Spratt discloses

wherein said operational status of the wireless communication device comprises:

an indication of N messages most frequently received at said device, where N is an integer [ i.e. total received messages ] [ Figure 8; and col 12, lines 13-35 ].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Himmel and Spratt because the teaching of Spratt would enable to provide for a device that is holding one or more messages for onward transmission, to send these messages immediately after having received a message from another device, there being a high probability that the latter device will receive the transmitted messages [ Spratt, col 13, lines 14-23 ].

18. As per claims, 9, 13, 21 and 30, they are rejected for similar reasons as stated above in claim 1.

19. Claims 11, 12, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himmel [ US Patent No 6,167,441 ], in view of Barrett et al. [ US Patent Application No 2004/0015583 ], and further in view of Tim Bray, Jean Paoli, C. M. Sperberg-McQueen, Eve Maler, Rancois Yergeau, "Extensible Markup Language (XML) 1.0 (Third Edition)", W3C Recommendation 04 February 2004 [ hereinafter as Bray et al. ].

20. As per claims 11 and 12, Himmel and Barrett do not specifically disclose wherein said composing comprises verifying that a textual operational status description forming part of said response message omits illegal XML characters, and wherein said verifying comprises passing said textual operational status description through an XML formatter for removal of any illegal XML characters. Bray et al. discloses wherein said composing comprises verifying that a textual



operational status description forming part of said response message omits illegal XML characters, and wherein said verifying comprises passing said textual operational status description through an XML formatter for removal of any illegal XML characters [ Section 2.3 ]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Himmel, Barrett and Bray et al. since the teaching of XML would enable to support a wide variety of applications, easy to write programs, etc... [ Bray et al., section 1.1 ].

21. As per claims 23 and 24, they are rejected for similar reasons as stated above in claims 11 and 12.

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DUSTIN NGUYEN/  
Primary Examiner, Art Unit 2454